THE HON'BLE MR JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO : 22218 of 2004

Between:

Mrs. Premlatha Devi, W/o Sri Vishan Raj Jain, and others.
(All R/o Flat No. 210, Sagar Apartments, Raj Bhavan Road, Somajiguda, Hyderabad.

..... PETITIONERS

AND

The District Collector, Hyderabad, Office of the Collector & District Magistrate, Nampally,Hyderabad. … RESPONDENT.

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WRIT PETITION NO : 22229 of 2004

Between:

1 Sri. Mohanlan Lakhotia S/o Sri. Gulabchand Lakhotia,
R/o Plot No.22, Road No.2, Sagar society, Banjara Hills, Hyderabad and others.

..... PETITIONERS

AND

The District Collector, Hyderabad, O/o Collector & district Magistrate, Nampally, Hyderabad

.....RESPONDENT

WRIT PETITION NO : 22230 of 2004

Between:

1 Sri Sohanlal Jain, s/o Sri Jawanmal,
2 Smt. Shanta Bai, W/o Sri Sohanlan
(Both R/o B-4/5, Chandralok Apartments, Sarojini Devi Road, Secunderabad).

..... PETITIONERS

AND

The District Collector, Hyderabad, Office of the Collector & District Magistrate, Nampally, Hyderabad.

.....RESPONDENT

WRIT PETITION NO: 22865 of 2004

Between:

1 Sri B. Venkateswarlu, S/o. Sri B. Siddaiah,
R/o. A2/4, MLA Quarters, Erramanzil, Colony, Hyderabad.
2 Smt. B. Vijayalakshmi, W/o. Sri B. Venkateswarlu,
R/o. A2/4, MLA Quarters, Erramanzil, Colony, Hyderabad.

..... PETITIONERS

AND

The District Collector, Hyderabad, Office of the Collector & District Magistrate, Nampally, Hyd

.....RESPONDENT

THE HON'BLE MR JUSTICE

B.SESHASAYANA REDDY

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WRIT PETITION NOs: 22218, 22865, 22230

and 22229 of 2004

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O R D E R:

1. Since common issue is involved in all these writ petitions, they are heard together and are being disposed of by this common order. The petitioners in the respective writ petitions are assailing the action of the respondent in rejecting their application

for issue of 'No Objection Certificate. The writ petitioners claimed that they had purchased the property under registered sale deeds dated 29-11-2000 from the legal heirs of Smt. Mercy Sonabai Chellappa. They submitted applications to the District Collector, Hyderabad for issue of 'No Objection Certificate' so as to enable them to obtain necessary building permission from the authorities concerned. The respondent under proceedings No.12/2186/2001 dated 19-11-2001 rejected the application of the petitioners. Thereupon the petitioners filed W.P.Nos.3388/2002, 3630/2002, 3602/2002 and 3629 of 2002. The said writ petitions came to be allowed setting aside the Memo dated 19-11-2001.The respondent filed W.A.Nos.1316, 1328, 1332 and 1334 of 2002 and the said writ appeals came to be disposed of on 09-02-2004 remanding the matter back to the respondent for fresh disposal. Thereafter, the respondent took up enquiry, heard arguments of the petitioners and reserved the matter for judgment. Subsequently, the petitioners filed a petition for reopening and to receive certain documents. The petitioners received a copy of the order dated 03-09-2004 rejecting their application for issuance of no objection certificate. It is the contention of the petitioners that predecessor in office of the respondent was transferred on 07-09-2004 therefore, the order impugned in the writ petition came to be cooked up by putting ante-date. To be more precise of the plea of the petitioners, I deem it appropriate to refer the relevant portion of the writ affidavit in W.P.No.22218 of 2004 and it is thus:

> "I submit that even before the orders were pronounced, the predecessor in office of the respondent was transferred on 07-09-2004 and hence the petitioners submitted an application to the respondent on 30-09-2004 requesting the Respondent to re-open the matter and fix a date which was followed by a letter dated 11-10-2001 requesting him to fix a date for the hearing of the case so as to enable the petitioners to present their case. To the surprise of the petitioners, on 13-10-2004, the petitioners' counsel received orders dated 03-09-2004 rejecting No objection certificate, which were dispatched by the respondent on 12-10-2004 i.e. a day after the application requesting for the fixing up a date for hearing
>
> was made on account of the transfer of the then District Collector. "

Assailing the order of the respondent in rejecting the application for grant of 'No

Objection Certificate,' these writ petitions are filed.

2. The respondent filed counter affidavit. It is stated in the counter affidavit that as per the Town Survey and Land Register, the land in question for which No Objection Certificate is sought for by the writ petitioners falls in T.S.No.19, Block-K, Ward No.12 correlated to Sy.No.403 of Shaikpet village and is classified as Government land. The Mandal Revenue Officer, Golconda (Presently Shaikpet Mandal) has filed a case under Land Grabbing (Prohibition)Act 1982 against Shaik Ahmed Bin Mohammed Amoodi to an extent of 15-00 acres in Sy.No.403 correlated to T.S.No.7/3 Part, 18,19,20,21,23 and 24, Block K Ward No.12 of Shaikpet village which includes the land claimed by the petitioners, for which they sought for No Objection Certificate. The Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad after conducting elaborate trial allowed the L.G.C.No.118 of 1989 in favour of Government for the land including the land for which No Objection Certificate was sought for declaring that Shaik Ahmed Bin Mohammed Amoodi and others as Land Grabbers. Aggrieved by the Judgment passed by the Special Court, Sk.Ahmed Bin Mohammed Amoodi had filed W.P.No.1751 of 1998. In the said writ petition, an interim order dated 02-02-1998 came to be passed making it clear that the Collector, Hyderabad is free to take necessary steps to prevent any encroachments or constructions being made on the disputed land until further orders. In pursuance of the directions given in the writ petition, the available vacant Government land to an extent of 9,906 Sq.Meters in T.S.No. 19 Block K Ward No.12 of Shaikpet village was fenced on 15-07-1998. After fencing the land, the writ petitioners have applied for 'No objection certificate' in respect of Plot NO.129/45/D to an extent of 2550 Sq.Yards (1050 + 500 + 500 + 500) situated at Road No.12, Banjara Hills, Hyderabad for obtaining approval of building plan from the Municipal Corporation of Hyderabad on 06-04-2001. The matter was referred to the Mandal Revenue Officer, Shaikpet for enquiry and report. The Mandal Revenue Officer, Shaikpet had reported that the land for which No Objection Certificate is applied for falls in Plot No.129/45/D of Defunct Jubilee Hills correlated to T.S.No.19/2/A, Block K, Ward No.12, which is covered by Writ Petition No.1751 of 1998. Thus, request for issuance of No Objection Certificate was rejected on 19-11-2001. Aggrieved by the rejection orders, the writ petitioners filed W.P.No.3602 of 2002 and batch and the said writ petitions came to be allowed on 28.6.2002. The respondent questioned the

orders passed in W.P.No.3602 of 2002 and batch by filing writ appeals being W.A.No.1332 of 2002 and batch. One A. Ramakrishna Reddy filed implead petitions in the writ appeals and came on record as party respondents. The said writ appeals came to be disposed of on 09-02-2004 setting aside the observations/findings of the learned Single Judge on title etc., and also setting aside the order of the District Collector dated 19-11-2001 rejecting issue of the 'No Objection Certificate' to the petitioners and remanding the matter back to the Collector, Hyderabad with a direction to consider and dispose of the applications filed by the respondents/writ petitioners as well as the applications filed by the proposed respondent and pass appropriate orders. While issuing Government Memo No.3933/ Q2/64-17, Revenue (Q) Department, dated 06-12-1967 recognizing the title of 41 allottees in respect of 50 defunct Jubilee Hills Municipality plots, it was examined as to whether the respective allottees had paid full cost of the plot or not. As the allottees left to Pakistan after the partition of the country, the land in Sy.No.403, T.s.No.19 was declared as Government land. The land claimed by the petitioners forms part of the subject Matter of L.G.C.No. 118 of 1989 filed by the State against one Shaik Ahmed Bin Mohd.Amoodi. Para 8 of the counter affidavit needs to be noted and it is thus:

> "On verification of document No.1020 of 1962 dated 16-07-1962, dated 16-07-1962 relied upon by the writ petitioners it is found that the signature of Mohd. Taquiddin on the application available in the original file of allotment was not tallying with that in the sale deed produced by the petitioners. It seems that the actual owner had not executed the said sale deed in the year 1962 as he left the country before 1949. The question of executing the said sale deed in 1962 does not arise. It is respectfully submitted here that the alleged sale deed is not bearing the original allottee. I.e. Mohd. Taquiddin. The MRO Shaikpet had reported on 06-02-2001 that all properties of Mohd Taquiddin ex-Secretary to Government Hyderabad Deccan were declared as Evacuee Property vide Notification No.5 dated 15-09-1949. Then only this had come to the notice of Collector, Hyderabad that it is an Evacuee Property. Further the Chief Commissioner of Land Administration, A.P.Hyderabad vide letter CCLA's Ref.No.SEP3/260/2001 dated 05-12-2001 had informed that it is not an Evacuee Property. Subsequently the CCLA, A.P. Hyderabad vide Ref.No.SEP3/260/2004, dated 12-07-2004 has withdrawn CCLA's Ref No.SEP3/260/2001 dated 05-12-2001. Further, as regard to the claim of the writ petitioners that the land in question in Plot No.129/45/D had also been declared by the Vendors of the petitioners under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the order passed by the Special Officer &Competent Authority, Urban Land Ceilings, Hyderbad, dated 27-06-2000 is not valid and the Collector, Hyderabad had filed an appeal before the Commissioner, Appeals and the Commissioner for Appeals had passed orders on 21-09-2002 to maintain status quo and the matter is pending before the Chief Commissioner of Appeal, A.P.Hyderabad. Regarding R.Bhaskar Rao's case, it is submitted that he had purchased the land from Gulam Mohd abudl Hasan, s/o Khadar Mohinuddin, who obtained compromise decree on 30-08-1961 in 2nd Appeal

NO.354/2 of 1954-55 and C.M.P.No.9587 of 1961 which has become final. The said matter is not the subject matter ofL.G.C.No.118 of 1989 and nothing to do with this case. After issuance of Supplementary Sethwar, shaik Ahmed Bin Mohd Amoodi had filed an objection petition on 27-09-1983 stating that no one should interfere with the peaceful possession and enjoyment of his land. The Deputy Director survey and Land Records, Hyderabad had addressed a letter to the Tahsildar, Golconda Taluq with a request not to interfere with the possession of the petitioner vide Lr.No.B1/1381/83 dated 16-01-1984. Aggrieved by the above, Mir Qumaruddin Ali who claimed to be G.P.A. holder of Mohammad Taquiddin had filed an appeal before the Commissioner of Land Revenue, A.P.Hyderabad and the Commissioner had ordered to maintain statusquo.

In nutshell the plea of the respondent is that the property claimed by the petitioner is an evacuee property vide notification dated 15-09-1949 and part and parcel of the land covered under L.G.C.No.118 of 1989 and more precisely forms part and parcel of the land fenced in pursuance of the interim orders passed on 2.2.1998 in W.P.No.1751 of 1998.

3. Heard the learned senior counsel appearing for the petitioners and the learned Government Pleader appearing for the respondent.

4. Learned senior counsel appearing for the petitioners submits that the grounds on which No Objection Certificate has been refused by the respondent are untenable, illegal and unsustainable. He refers to the sequence of events to convince the court the grounds on which the respondent refused to issue No Objection Certificate to the writ petitioners are unsustainable. The sequence of events elaborated by him in his arguments are as follows:

1. Memo No.3933/Q2/64-17, dated 6.12.67 issued by Government of A.P. recognizing Mohd.Taquiddin as a genuine allottee of the defunct jubilee hills municipality Plot No.129/45/D to an extent of Ac.3.21 guntas.
2. Issuance of supplementary sethwar in the name of Mohd.Taquiddin in C.A.File No.G/PC/62/82.
3. Sale of 10106 square yards in favour of Mrs.Mercy Sonabai Chellappa by Mohd.Taquiddin by registered sale deed dated 16-7-62.
4. Declaration filed by Mrs.Mercy Sonabai Chellappa under section 6(1) of

ULC Act on 14.9.76 vide file No.E1/10320/76.

5. A letter dated 22.5.1995 by Special Officer and Competent Authority, ULC to District Collector, Hyderabad seeking clarification about Plot No.129/45/D.

6. Letter No.A3/3587/94 dated 12.7.1995 by the District Collector, Hyderabad informing the Special Officer, ULC that Plot No.129/45/D is in the name of Mohd.Taquiddin to an extent of Ac.3.21 guntas.

7. During pendency of the ULC proceedings Mrs.Mercy Sonabai Chellappa died and her 5 children were brought on record, who are the vendors of the petitioners. Final orders under Section 8(4) were issued by the Special Officer on 27.6.2000.

8. Gazette Notification under Sec.10(1) of the ULC Act was published vide Notification No.44, dated 2.11.2000 calling for objections if any for the land surrendered by the declarants. No objections were filed.

9. The petitioners purchased their respective plots in the year 2000 through registered sale deeds dated 29.11.2000.

10. The petitioners applied to the District Collector, Hyderabad for issuance of No Objection Certificate to enable them to obtain Municipal permission for construction of houses in their plots.

11. The District Collector vide Memo dated 19.11.2001 refused to issue NOC to petitioners on two grounds:

    i. That a land grabbing case was pending against one amodi and that it was alloed and that the plots of the petitioners are covered by the order in the LGC.

    ii. That it was an evacuee property.

12. The petitioners filed W.P.3388/2002 and 3 other writ petitions questioning the Memo dated 19.11.2001 issued by the District Collector and all the Writs were allowed by a learned Single Judge by judgment dated 28.6.2002 directing the Collector to issue NOC to the petitioners.

13. The State preferred Writ Appeals against the judgment of the learned single Judge in W.P.No.3388/2002 and batch, the said writ appeals came to be disposed of remanding the matter back to the respondent for fresh consideration.

By referring the sequence of events stated supra, the learned senior counsel appearing for the petitioners contends that there is no consistency in the stand of the Government, which indicates inherent weakness in the plea put forth by the respondent. It is also contended by him that the Government having verified the

declaration filed by Mrs.Mercy Sonabai Chellappa and certifying that the properties shown in the declaration belonged to her is estoped from contending that it is evacuee property or the property forms part and parcel of LGC.No.118 of 1989 to which neither the petitioners nor their vendors or original owner-Mrs.Mercy Sonabai Chellappa were parties. Yet another contention has been raised that the Officer who heard arguments on the applications came to be transferred before pronouncement of orders and that he signed on the order impugned in the writ petition after getting relieved from the post of District Collector, Hyderabad. The basis for his contention is that the copy of the order was not communicated to the petitioners till 13.10.2004 and the application filed by the petitioners for reopening the case was not adverted to in the order. In other words, his contention is had the orders were passed before the Officer relieved from the post of District Collector, Hyderabad, he would not have missed to note the application filed by the petitioners to reopen the matter. The only ground for urging this contention is abnormal delay in communicating the copy of the order to the petitioner. In my considered opinion, the delay in communicating the copy of the order is not sufficient to draw a conclusion that the order impugned is ante dated.

5. Learned Special Government Pleader appearing for the respondent submits that the respondent considered the material brought on record in right perspective and took note of serious title dispute in respect of the property claimed by the petitioners and also pendency of the proceedings under the Land Grabbing Act and thereby rejected the application filed by the petitioners for issue of 'No Objection Certificate' and therefore the order passed by the respondent is legal and proper and the same is not required to be interfered in exercise of the powers under Art.226 of the Constitution. In elaborating his arguments, he took me to various proceedings pending before the authorities. Firstly, the appeal filed by the Government under ULC Act against the orders passed by the Special officer and competent authority; secondly proceedings before the Land Grabbing Court; thirdly appeal before the Commissioner of Land Revenue, A.P. Hyderabad.

6. It is well settled and needs no re-statement that this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot embark on an enquiry into the intricate questions of right, title and interest in any immovable property and

decide the same. The proceedings being summary in nature are illsuited for adjudicating such questions relating to right, title and interest in any immovable property. The Supreme Court in RAJASTHAN V. BHAWANI SINGH observed that disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

7. Keeping the scope of jurisdiction of this court under Article 226 of the Constitution of India I proceed to consider the rival contentions of the parties.

8. The petitioners claim that they purchased the property from legal representatives of Mrs.Mercy Sonabai Chellappa under a registered sale deed dated 29-11-2000. The original owner, according to the petitioners, was Mohd.Taquiuddin who stated to have purchased Ac.3.21 guntas from the erstwhile Jubilee Hills Municipality and subsequently some disputes arose between Mohd.Taquiuddin and one Gulam Mohd.Abdul Hussain and the said disputes ended in compromise in A.S.No.354 of 2000 of 1954 and 1955 whereunder Mohd.Taquiuddin got Ac.2.22 ½ guntas and and Gulam Mohd.abdul Hussain got 0.38 ½ guntas. Mrs.Mercy Sonabai Chellappa purchased 10606 square yards from Mohd.Taquiuddin under a registered sale deed dated 16.7.1962. She filed declaration before ULC authorities. Pending adjudication of the matter before ULC she died and her legal representatives came on record. The Special Officer and competent authority, ULC, Hyderabad by an order dated 27.6.2000 found the LRs of the deceased holding 241.44 square yards in excess of their ceiling limit. The State filed an appeal against the orders passed by the Special officer and competent authority, ULC and the said appeal is stated to be pending adjudication.

9. The State filed land grabbing case against Shaik Ahmed Bin Amoodi and others in respect of Ac.25-00 of land. The said LGC came to be allowed declaring them as land grabbers. Assailing the order passed by the Special Court, Shaik Ahmed Bin Amoodi filed writ petition. It appears the said writ petition ended in dismiss for default and subsequently restored to file and the same is pending adjudication. It has also come on record that Mir.Kumaruddin Ali who claimed to be GPA holder of Mohd.

Taquiuddin filed an appeal before the Commissioner, Land Revenue, Hyderabad in respect of issuance of supplementary sethwar in favour of Shaik Ahmed Bin Mohammad Ali.

10. Learned Special Government Pleader appearing for the respondent submits that the lands claimed by the petitioners is part and parcel of the lands covered by the land grabbing case. He refers the plan prepared by the Surveyor of Shaikpet in support of his submission that the land claimed by the petitioners is part and parcel of the land covered by the land grabbing case.

11. It is trite to note at this juncture the order passed by the Division Bench in W.P.No.1751 of 1998 Dated: 2.2.1998 and it is thus:

> " Learned Government Pleader for Assignments seeks one week time for filing counter. Post on 9.2.98. In the meanwhile, there shall be status quo obtaining as on today with regard to possession of the disputed land. In this regard, we make it clear that the Collector, Hyderabad is free to take necessary steps to prevent any encroachments or constructions being made on the disputed land until further orders. We also make it clear that the petitioners shall not make any alienations or constructions on the disputed land until further orders."

According to the respondent, the petitioners filed application for issue of 'No Objection Certificate' after the authorities of the respondent fenced the land in pursuance of the orders granted by the Division Bench. It does not matter much whether the application filed by the petitioners is prior to fencing or after fencing. But a fact is required to be noted that it is the specific plea of the respondent that the land claimed by the petitioners is part and parcel of the land covered by the land grabbing case. There are three proceedings pending in respect of the land for which the petitioners have sought for 'No Objection Certificate' The petitioners are not parties to the proceedings pending under A.P.Land Grabbing Act as well as Urban Land Ceiling Act. But vendors of the petitioners are parties to the appeal pending before

the Commissioner of Appeals under ULC Act. Pending the proceedings before the ULC authorities, 'No Objection Certificate' cannot be issued in favour of the petitioners. Therefore, the order passed by the respondent in not granting 'No Objection Certificate' cannot be found fault. The petitioners are at liberty to move an application for issue of 'No Objection Certificate' to the authorities concerned after concluding the proceedings before the ULC authorities, which application is required to be considered and appropriate orders are to be passed in accordance with law.

13. Accordingly, these batch of writ petitions are dismissed. No costs.

Dated: 16-09-2005 (B.Seshasayana Reddy,J)

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THE HON'BLE MR JUSTICE

B.SESHASAYANA REDDY

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WRIT PETITION NOs: 22218, 22865, 22230

and 22229 of 2004

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Dated: 16-09-2005.